

## **2009 DRAFTING REQUEST**

### **Bill**

Received: **01/26/2009**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-7505**

By/Representing: **Jennifer Oechsner**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Real Estate - landlord/tenant**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Plale@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

### **Pre Topic:**

No specific pre topic given

---

### **Topic:**

Terminating a tenancy for conviction of a drug-related or violent crime

---

### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 01/26/2009	bkraft 01/27/2009		_____			
/P1			jfrantze 01/27/2009	_____	sbasford 01/27/2009		
/P2	pkahler 04/28/2009	bkraft 04/29/2009	rschluet 04/29/2009	_____	lparisi 04/29/2009		
/1	pkahler	bkraft	phenry	_____	cduerst	cduerst	

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	12/03/2009	12/03/2009	12/04/2009 _____		12/04/2009	03/09/2010	

FE Sent For: **NONE**

&lt;END&gt;

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/P2	pkahler 04/28/2009	bkraft 04/29/2009	rschluet 04/29/2009	_____	lparisi 04/29/2009		
/1	pkahler	bkraft	phenry	_____	cduerst		

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1 bjk 12/3  
PH 4  
04/29/09  
JF

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/P1

jfrantze  
01/27/2009

sbasford  
01/27/2009

/P2 bjk 4/29

FE Sent For:

<END>

JB  
4/29

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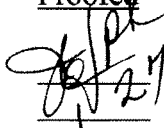
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/?	pkahler	Pl bjk 1/27	 1/27	 1/27			

FE Sent For:

<END>



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)


Legal (608-266-3561)

LRB

Sen. Plale      Jennifer

LRB-4436/P1

redraft of



**Kahler, Pam**

---

**From:** Oechsner, Jennifer  
**Sent:** Friday, January 23, 2009 4:19 PM  
**To:** Kahler, Pam  
**Subject:** RE: Crime free housing legislation

Oh that's fine, I figured that would be the case.

"I think it would be better to have a statute that allows a landlord to terminate a tenancy for a particular reason than to have a statute that allows a landlord to specify a reason for termination in some leases. The latter would be discriminatory and raise a constitutional issue of violating equal protection."

Jennifer

---

**From:** Kahler, Pam  
**Sent:** Friday, January 23, 2009 3:02 PM  
**To:** Oechsner, Jennifer  
**Subject:** RE: Crime free housing legislation

Jennifer:

I took a look at what you faxed over, but in the copying/faxing process, the part that is highlighted is blacked out! You probably do not have a copy any longer that is not highlighted. If you do, though, could you fax me that (264-6948)? If not, would it be possible for you to e-mail me just the two sentences that appear blacked out? I suppose you would have to type them out - sorry.

Pam

---

**From:** Oechsner, Jennifer  
**Sent:** Wednesday, January 21, 2009 4:52 PM  
**To:** Kahler, Pam  
**Subject:** RE: Crime free housing legislation

Faxed the email. I had highlighted a portion of it so let me know if the last couple of lines of the first paragraph is still readable.

Thanks again,

Jennifer

---

**From:** Kahler, Pam  
**Sent:** Wednesday, January 21, 2009 4:28 PM  
**To:** Oechsner, Jennifer  
**Subject:** RE: Crime free housing legislation

That would be great. The fax number is 264-6948.

---

**From:** Oechsner, Jennifer  
**Sent:** Wednesday, January 21, 2009 4:01 PM  
**To:** Kahler, Pam  
**Subject:** RE: Crime free housing legislation

Pam

I certainly understand your time constraints. I do have an email from you but only a hard copy. Can I fax it to you?

Thank you for your time and assistance on this issue.

Jennifer

---

**From:** Kahler, Pam  
**Sent:** Wednesday, January 21, 2009 3:46 PM  
**To:** Oechsner, Jennifer  
**Subject:** RE: Crime free housing legislation

I will take a look at the issue as soon as I can, given time pressure for budget matters.

---

**From:** Oechsner, Jennifer  
**Sent:** Wednesday, January 21, 2009 3:43 PM  
**To:** Kahler, Pam  
**Subject:** Crime free housing legislation

Pam,

We spoke briefly this morning about getting LRB 4436 from last year redrafted. I found an email from you in my notes regarding a possible question of constitutionality. What we are trying to do is amend Wisconsin's right to cure law to exempt certain crimes from applying right to cure, the specifics being outlined in a crime free lease addendum. Can you please explain how this would raise issues within equal protection law. Might be best to further explore this before you take the time to re-draft.

Thank you for your time,

Jennifer Oechsner  
Office of Senator Jeff Plale  
District Office: 414.744.1444  
Madison Office: 608.266.7505

**Oechsner, Jennifer**

**From:** Kahler, Pam  
**Sent:** Tuesday, May 27, 2008 11:39 AM  
**To:** Oechsner, Jennifer  
**Subject:** RE: Bill draft

Jennifer:

Under s. 704.17, other than for not paying rent or committing waste to the premises or breaching the lease, a tenant's lease can be terminated if law enforcement notifies the landlord that the property is being used as a drug or gang house. I don't know what you mean by a "3rd strike and you're out" policy, because the lease can be terminated after only one instance. The tenant has to be given notice and can contest the termination in an eviction action. You should take a look at a bill from this session that sounds very similar to what you described: 2007 AB 692. That bill allowed a landlord to terminate the tenancy of a tenant who had been convicted of a drug offense. A conviction (not just a complaint) was necessary, and it was the landlord's responsibility to find out about the conviction, but it is my understanding that they do have access to court records online. Requiring clerk's to notify landlords was too onerous (and expensive) a requirement, since it would be difficult for them to know who is a renter and who the landlord is. The idea from that bill could be modified to include conviction for a violent crime, too. I think it would be better to have a statute that allows a landlord to terminate a tenancy for a particular reason than to have a statute that allows a landlord to specify a reason for termination in a lease. The latter would be discriminatory and raise a constitutional issue of violating equal protection.

I also found some statutes that define "violent crime." Unfortunately, these sections just lead to further sections so you'll have to do some digging, but take a look at ss. 939.619 (1), 939.632 (1) (e), and 969.035 (1) for some ideas.

Let me know how you want to proceed. Thanks.

Pam

---

**From:** Oechsner, Jennifer  
**Sent:** Wednesday, May 21, 2008 3:21 PM  
**To:** Kahler, Pam  
**Subject:** RE: Bill draft

Pam,

This is for drug related offenses or violent crime. Would "violent crime" have to be defined.

Thanks,

Jennifer

---

**From:** Kahler, Pam  
**Sent:** Wednesday, May 21, 2008 1:41 PM  
**To:** Oechsner, Jennifer  
**Subject:** RE: Bill draft

Thanks.

---

**From:** Oechsner, Jennifer  
**Sent:** Wednesday, May 21, 2008 1:41 PM  
**To:** Kahler, Pam  
**Subject:** RE: Bill draft

Pam,

No Problem, just something we are working on for next session.

Jennifer



State of Wisconsin  
2007 - 2008 LEGISLATURE

1793/P1  
LRB-4436/P1  
PJK:bjk:jl  
L stage

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

J-note  
(1-26)  
SA✓

reger.

1 AN ACT *to create* 704.17 (1) (d), 704.17 (2) (d) and 704.17 (3) (c) of the statutes;  
2 relating to: terminating a tenancy for a conviction of a drug-related or violent  
3 crime.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4 SECTION 1. 704.17 (1) (d) of the statutes is created to read:

5 704.17 (1) (d) 1. In this paragraph:

6 a. "Drug offense" means a felony that has as an element manufacture or  
7 distribution of a controlled substance, as defined in s. 961.01 (4).

8 b. "Violent crime" has the meaning given in s. 969.035 (1).

\*\*\*\*NOTE: I chose one of the definitions for "violent crime" in current law. There are others in ss. 939.619 (1) and 939.632 (1) (e). You could also select certain crimes that you want to define as violent and specify your own list.

Insert A

1           2. A property owner may terminate the tenancy of a week-to-week or  
2 month-to-month tenant if the tenant is convicted of a drug offense or violent crime  
3 and if the property owner gives the tenant written notice requiring the tenant to  
4 vacate on or before a date not less than 5 days after the giving of the notice. The notice  
5 shall state the basis for its issuance and the right of the tenant to contest the  
6 termination of tenancy in an eviction action under ch. 799. If the tenant contests the  
7 termination of tenancy, the tenancy may not be terminated without proof by the  
8 property owner by the greater preponderance of the credible evidence of the  
9 allegation that the tenant was convicted of a drug offense or violent crime.

10           SECTION 2. 704.17 (2) (d) of the statutes is created to read:

11           704.17 (2) (d) 1. In this paragraph:

12           a. "Drug offense" means a felony that has as an element manufacture or  
13 distribution of a controlled substance, as defined in s. 961.01 (4).

14           b. "Violent crime" has the meaning given in s. 969.035 (1).

> \*\*\*\*NOTE: I chose one of the definitions for "violent crime" in current law. There are others in ss. 939.619 (1) and 939.632 (1) (e). You could also select certain crimes that you want to define as violent and specify your own list.

15           2. A property owner may terminate the tenancy of a tenant who is under a lease  
16 for a term of one year or less or who is a year-to-year tenant if the tenant is convicted  
17 of a drug offense or violent crime and if the property owner gives the tenant written  
18 notice requiring the tenant to vacate on or before a date not less than 5 days after  
19 the giving of the notice. The notice shall state the basis for its issuance and the right  
20 of the tenant to contest the termination of tenancy in an eviction action under ch. 799.  
21 If the tenant contests the termination of tenancy, the tenancy may not be terminated  
22 without proof by the property owner by the greater preponderance of the credible

1 evidence of the allegation that the tenant was convicted of a drug offense or violent  
2 crime.

3 **SECTION 3.** 704.17 (3) (c) of the statutes is created to read:

4 704.17 (3) (c) 1. In this paragraph:

5 a. "Drug offense" means a felony that has as an element manufacture or  
6 distribution of a controlled substance, as defined in s. 961.01 (4).

7 b. "Violent crime" has the meaning given in s. 969.035 (1).

8 *\*\*\*NOTE: I chose one of the definitions for "violent crime" in current law. There are  
9 others in ss. 939.619 (1) and 939.632 (1) (e). You could also select certain crimes that you  
10 want to define as violent and specify your own list.*

11 2. A property owner may terminate the tenancy of a tenant who is under a lease  
12 for a term of more than one year if the tenant is convicted of a drug offense or violent  
13 crime and if the property owner gives the tenant written notice to vacate on or before  
14 a date at least 5 days after the giving of the notice. The notice shall state the basis  
15 for its issuance and the right of the tenant to contest the termination of tenancy in  
16 an eviction action under ch. 799. If the tenant contests the termination of tenancy,  
17 the tenancy may not be terminated without proof by the property owner by the  
18 greater preponderance of the credible evidence of the allegation that the tenant was  
19 convicted of a drug offense or violent crime.

20 **SECTION 4. Initial applicability.**

(1) This act first applies to drug offenses or violent crimes committed on the  
effective date of this subsection.

(END)

*during tenancies  
commenced or renewed*

*X - note*

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1793/<sup>P1</sup>ins  
PJK:.....

**INSERT A**

Under current law, a tenant's tenancy may be terminated by the landlord for nonpayment of rent, for committing waste, for breaching a covenant or condition of the tenant's rental agreement, or if the property owner receives notice from a law enforcement agency or the office of the district attorney that a nuisance exists in the rental unit because the property is being used for drug-related purposes or criminal gang-related purposes. Under this bill, a landlord may terminate the tenancy of a tenant if the tenant is convicted of a felony that has as an element manufacture or distribution of a controlled substance or of a violent crime, which generally involves battery, sexual assault, or physical abuse. The landlord must provide notice to the tenant to vacate the property on or before a date that is at least five days after the giving of the notice. The notice must advise the tenant of the reason for termination of the tenancy and of the tenant's right to contest the termination of tenancy in an eviction action.

**(END OF INSERT A)**



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1793/Adn

PJK:.....

Date

Pl  
Lbjk

For the definition of "violent crime," I used the definition in s. 969.035 (1). There are also definitions in ss. 939.619 (1) and 939.632 (1) (e). Alternatively, you may create your own definition or select specific crimes and create your own list.

Note that I altered the initial applicability from what was in the draft last session. The new basis for terminating a tenancy under this draft does not apply to the commission of a crime during a tenancy that commenced before the effective date. Is this ok?

The draft last session included the following in a drafter's note:

"Note that notice from a law enforcement agency that the premises are being used as a drug or criminal gang house is not specified under s. 710.15 (5m) as grounds for termination of a tenancy in a mobile home park, although one could argue that it falls under "other good cause" under s. 710.15 (5m) (k). Do you want to specify in s. 710.15 (5m) that conviction of a drug-related or violent crime is grounds for termination of a tenancy in a mobile home park?"

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1793/P1dn  
PJK:bjk:jf

January 27, 2009

For the definition of "violent crime," I used the definition in s. 969.035 (1). There are also definitions in ss. 939.619 (1) and 939.632 (1) (e). Alternatively, you may create your own definition or select specific crimes and create your own list.

Note that I altered the initial applicability from what was in the draft last session. The new basis for terminating a tenancy under this draft does not apply to the commission of a crime during a tenancy that commenced before the effective date. Is this ok?

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Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**Kahler, Pam**

---

**From:** Oechsner, Jennifer  
**Sent:** Friday, April 03, 2009 1:08 PM  
**To:** Kahler, Pam  
**Subject:** Changes to LRB 1793/P1

Pam,

I have some changes/additions to suggest for LRB 1793/1.

1. On page 2 of the draft #2 states that the law would apply to week -to- week or month- to -month tenants. We would like it to apply to all tenants, week -to -week, month -to- month, leases of a year or less or a year or more.

2. For the same section on page 2 please consider the following language:

adding to State Stat. 704.17 (2)(b) *If there is a breach that is both material and irreparable and that occurs on the premises, including but not limited to prostitution {as prohibited in s. 944.30, 944.31, 944.33 and 944.34}, criminal activity {as defined in s. 939.22(9)}, harassment {as prohibited in s. 947.013}, battery {as prohibited in s. 940.19}, endangering safety by use of dangerous weapon {as prohibited in s. 941.20}, on or near the dwelling unit premises, or any breach of the rental agreement that otherwise jeopardizes the health, safety, and welfare of the landlord, his agent or other tenant, or involving imminent or actual serious damage to property {as defined in s. 943.01}, the landlord may deliver a written notice for immediate termination of the rental agreement and shall proceed under section 799.40.*

The challenge to current language lies in allowing for termination of lease for "conviction" as there is often a long lapse of time between between arrest and conviction. For certain offenses, we would like language to address allowing landlord to terminate lease without a conviction for certain egregious offenses stated above.

Please contact me with any questions.

Thank you for your time,

Jennifer Oechsner  
Office of Senator Jeff Plale  
District Office: 414.744.1444  
Madison Office: 608.266.7505

arrest? do they all require  
an arrest?  
how would ll know?  
complaint? how would ll  
know?



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1793/2  
PJK:bjk:ff  
P2  
e  
stays  
r m is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA

Inserts

Divide  
(w/ 4-28)

on the basis of a reason to believe  
crimes  
that certain crimes or other  
activities are being committed  
activities are being committed  
on or near the premises  
on or near the premises

regenerate ↓

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Insert A

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4 b. "Violent crime" has the meaning given in s. 969.035 (1).

5 2. A property owner may terminate the tenancy of a week-to-week or  
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8 b. "Violent crime" has the meaning given in s. 969.035 (1).

9 2. A property owner may terminate the tenancy of a tenant who is under a lease  
10 for a term of more than one year if the tenant is convicted of a drug offense or violent  
11 crime and if the property owner gives the tenant written notice to vacate on or before  
12 a date at least 5 days after the giving of the notice. The notice shall state the basis  
13 for its issuance and the right of the tenant to contest the termination of tenancy in  
14 an eviction action under ch. 799. If the tenant contests the termination of tenancy,  
15 the tenancy may not be terminated without proof by the property owner by the  
16 greater preponderance of the credible evidence of the allegation that the tenant was  
17 convicted of a drug offense or violent crime.

18 **SECTION 4. Initial applicability.**

19 (1) This act first applies to drug offenses or violent crimes committed during  
20 tenancies commenced or renewed on the effective date of this subsection.

21 (END)

*or other actions*

*Insert 3-17*

*D-note*

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1793/P2ins  
PJK:.....

**INSERT A**

landlord has reason to believe that the tenant is committing or has committed on or near the premises a breach of the lease that jeopardizes the health, safety, or welfare of the landlord or his or her agent or another tenant, criminal gang activity, or any of a number of crimes specified in the bill relating to prostitution, harassment, battery, endangering safety by use of a dangerous weapon, or damage to property

(END OF INSERT A)

**INSERT 2-13**

704.17 (1) (d) 1. A landlord may terminate the tenancy of a week-to-week or month-to-month tenant if the landlord has reason to believe that the tenant is committing or has committed on or near the premises any of the following:

- a. Any of the crimes relating to battery that are specified under s. 940.19.
- b. Any of the crimes relating to endangering safety by use of a dangerous weapon that specified under s. 941.20.
- c. Criminal gang activity, as defined in s. 941.38.
- d. Any of the crimes relating to damage to property that are specified under s. 943.01.
- e. Any of the crimes relating to prostitution that are specified under ss. 944.30, 944.31, 944.33, and 944.34.
- f. Any of the crimes relating to harassment that are specified under s. 947.013.
- g. Notwithstanding par. (b), any breach of the rental agreement that jeopardizes the health, safety, or welfare of the landlord or his or her agent or another tenant.

2. A landlord terminating a tenancy under subd. 1. must give the tenant written notice requiring the tenant to vacate on or before a date not less than 5 days after the giving of the notice. The notice shall state the basis for its issuance and the



*Ins. 2-13 contd*

1 right of the tenant to contest the termination of tenancy in an eviction action under  
2 ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be  
3 terminated without proof by the landlord by the greater preponderance of the  
4 credible evidence that the tenant is committing or has committed on or near the  
5 premises a crime or other activity specified in subd. 1.

(END OF INSERT 2-13)

**INSERT 3-3**

6 704.17 (2) (d) 1. A landlord may terminate the tenancy of a tenant who is under  
7 a lease for a term of one year or less or who is a year-to-year tenant if the landlord  
8 has reason to believe that the tenant is committing or has committed on or near the  
9 premises any of the following:

- 10 a. Any of the crimes relating to battery that are specified under s. 940.19.
- 11 b. Any of the crimes relating to endangering safety by use of a dangerous  
12 weapon that specified under s. 941.20.
- 13 c. Criminal gang activity, as defined in s. 941.38.
- 14 d. Any of the crimes relating to damage to property that are specified under s.  
15 943.01.
- 16 e. Any of the crimes relating to prostitution that are specified under ss. 944.30,  
17 944.31, 944.33, and 944.34.
- 18 f. Any of the crimes relating to harassment that are specified under s. 947.013.
- 19 g. Notwithstanding par. (b), any breach of the rental agreement that  
20 jeopardizes the health, safety, or welfare of the landlord or his or her agent or another  
21 tenant.





*Ins 3-3 contd*

1           2. A landlord terminating a tenancy under subd. 1. must give the tenant  
2 written notice requiring the tenant to vacate on or before a date not less than 5 days  
3 after the giving of the notice. The notice shall state the basis for its issuance and the  
4 right of the tenant to contest the termination of tenancy in an eviction action under  
5 ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be  
6 terminated without proof by the landlord by the greater preponderance of the  
7 credible evidence that the tenant is committing or has committed on or near the  
8 premises a crime or other activity specified in subd. 1.

(END OF INSERT 3-3)

INSERT 3-17

9           704.17 (3) (c) 1. A landlord may terminate the tenancy of a tenant who is under  
10 a lease for a term of more than one year if the landlord has reason to believe that the  
11 tenant is committing or has committed on or near the premises any of the following:

- 12           a. Any of the crimes relating to battery that are specified under s. 940.19.  
13           b. Any of the crimes relating to endangering safety by use of a dangerous  
14 weapon that specified under s. 941.20.  
15           c. Criminal gang activity, as defined in s. 941.38.  
16           d. Any of the crimes relating to damage to property that are specified under s.  
17 943.01.  
18           e. Any of the crimes relating to prostitution that are specified under ss. 944.30,  
19 944.31, 944.33, and 944.34.  
20           f. Any of the crimes relating to harassment that are specified under s. 947.013.



(4)

Ins. 3-17 contd

g. a

1 g. Notwithstanding par. (g), any breach of the rental agreement that  
2 jeopardizes the health, safety, or welfare of the landlord or his or her agent or another  
3 tenant.

4 2. A landlord terminating a tenancy under subd. 1. must give the tenant  
5 written notice requiring the tenant to vacate on or before a date not less than 5 days  
6 after the giving of the notice. The notice shall state the basis for its issuance and the  
7 right of the tenant to contest the termination of tenancy in an eviction action under  
8 ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be  
9 terminated without proof by the landlord by the greater preponderance of the  
10 credible evidence that the tenant is committing or has committed on or near the  
11 premises a crime or other activity specified in subd. 1.

(END OF INSERT 3-17)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1793/P2dn

PJK:.....

Lbjk

Date

that you sent to me  
by e-mail

This version of the bill is based on the crimes in the suggested language. As you can see, it allows a landlord to terminate a tenancy if the landlord has reason to believe that any of the crimes or other activities are being committed, rather than having to wait for a conviction. If you would prefer a different basis, let me know.

I retained the 5-day notice requirement, as well as the other current law procedural language. Five days does not seem too long, and I think you have a due process problem if you require immediate removal by the tenant on the basis of "a reason to believe" that a crime or other activity is being committed.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1793/P2dn  
PJK:bjk:rs

April 29, 2009

This version of the bill is based on the crimes in the suggested language that you sent to me by e-mail. As you can see, it allows a landlord to terminate a tenancy if the landlord has reason to believe that any of the crimes or other activities are being committed, rather than having to wait for a conviction. If you would prefer a different basis, let me know.

I retained the 5-day notice requirement, as well as the other current law procedural language. Five days does not seem too long, and I think you have a due process problem if you require immediate removal by the tenant on the basis of a "reason to believe" that a crime or other activity is being committed.

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Phone: (608) 266-2682  
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## STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

12-02-09

meeting at Sen. Phalen's office

Jannifer O.  
Katie B.

me

Officer Brian Fleming

want to avoid "right to cure" because can't  
really "cure" committing criminal activity

except from current law stat that we = conflict  
problem w/ ll has "reason to believe" how?

add "guest of tenant"

decided to drop language about ll has  
reason to believe and just state  
that tenant (or guest) is committing the  
crime or other activity



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1793/01

PJK:bjk:rs

stay

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA  
X-ref

(in 12-3)

Inserts

D-note

regenerate

- 1 AN ACT *to create* 704.17 (1) (d), 704.17 (2) (d) and 704.17 (3) (c) of the statutes;
- 2 relating to: terminating a tenancy on the basis of a reason to believe that
- 3 certain crimes or other activities are being committed on or near the premises.

by using the method provided in the bill

**Analysis by the Legislative Reference Bureau**

Under current law, a tenant's tenancy may be terminated by the landlord for nonpayment of rent, for committing waste, for breaching a covenant or condition of the tenant's rental agreement, or if the property owner receives notice from a law enforcement agency or the office of the district attorney that a nuisance exists in the rental unit because the property is being used for drug-related purposes or criminal gang-related purposes. Under this bill, a landlord may terminate the tenancy of a tenant if the landlord has reason to believe that the tenant is committing or has committed on or near the premises a breach of the lease that jeopardizes the health, safety, or welfare of the landlord or his or her agent or another tenant; criminal gang activity; or any of a number of crimes specified in the bill relating to prostitution, harassment, battery, endangering safety by use of a dangerous weapon, or damage to property. The landlord must provide notice to the tenant to vacate the property on or before a date that is at least five days after the giving of the notice. The notice must advise the tenant of the reason for termination of the tenancy and of the tenant's right to contest the termination of tenancy in an eviction action. ~~Section A~~

X3

property owner

or request of the tenant

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

Insert 2-1

1 SECTION 1. 704.17 (1) (d) of the statutes is created to read:

2 704.17 (1) (d) 1. A landlord may terminate the tenancy of a week-to-week or  
3 month-to-month tenant if the landlord has reason to believe that the tenant is  
4 committing or has committed on or near the premises any of the following:

5 a. Any of the crimes relating to battery that are specified under s. 940.19.

6 b. Any of the crimes relating to endangering safety by use of a dangerous  
7 weapon that specified under s. 941.20.

8 c. Criminal gang activity, as defined in s. 941.38.

9 d. Any of the crimes relating to damage to property that are specified under s.  
10 943.01.

11 e. Any of the crimes relating to prostitution that are specified under ss. 944.30,  
12 944.31, 944.33, and 944.34.

13 f. Any of the crimes relating to harassment that are specified under s. 947.013.

14 g. Notwithstanding par. (b), any breach of the rental agreement that  
15 jeopardizes the health, safety, or welfare of the landlord or his or her agent or another  
16 tenant.

17 2. A landlord terminating a tenancy under subd. 1. must give the tenant  
18 written notice requiring the tenant to vacate on or before a date not less than 5 days  
19 after the giving of the notice. The notice shall state the basis for its issuance and the  
20 right of the tenant to contest the termination of tenancy in an eviction action under  
21 ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be  
22 terminated without proof by the landlord by the greater preponderance of the  
23 credible evidence that the tenant is committing or has committed on or near the  
24 premises a crime or other activity specified in subd. 1.

25 SECTION 2. 704.17 (2) (d) of the statutes is created to read:

Insert 2-24

Insert 2-3

Insert 2-17

or a guest of the tenant

property owner

Insert 2-3

704.17 (2) (d) 1. A landlord may terminate the tenancy of a tenant who is under a lease for a term of one year or less or who is a year-to-year tenant if the landlord has reason to believe that the tenant is committing or has committed on or near the premises any of the following:

- a. Any of the crimes relating to battery that are specified under s. 940.19.
- b. Any of the crimes relating to endangering safety by use of a dangerous weapon that specified under s. 941.20.
- c. Criminal gang activity, as defined in s. 941.38.
- d. Any of the crimes relating to damage to property that are specified under s. 943.01.
- e. Any of the crimes relating to prostitution that are specified under ss. 944.30, 944.31, 944.33, and 944.34.
- f. Any of the crimes relating to harassment that are specified under s. 947.013.
- g. Notwithstanding par. (b), any breach of the rental agreement that jeopardizes the health, safety, or welfare of the landlord or his or her agent or another tenant.

2. A landlord terminating a tenancy under subd. 1. must give the tenant written notice requiring the tenant to vacate on or before a date not less than 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the landlord by the greater preponderance of the credible evidence that the tenant is committing or has committed on or near the premises a crime or other activity specified in subd. 1.

SECTION 3. 704.17 (3) (c) of the statutes is created to read:

Insert 3-24

It's a guest of the tenant



Insert 2-3

1 704.17 (3) (c) 1. A landlord may terminate the tenancy of a tenant who is under  
2 a lease for a term of more than one year if the landlord has reason to believe that the  
3 tenant is committing or has committed on or near the premises any of the following:

- 4 a. Any of the crimes relating to battery that are specified under s. 940.19.  
5 b. Any of the crimes relating to endangering safety by use of a dangerous  
6 weapon that specified under s. 941.20.  
7 c. Criminal gang activity, as defined in s. 941.38.  
8 d. Any of the crimes relating to damage to property that are specified under s.  
9 943.01.  
10 e. Any of the crimes relating to prostitution that are specified under ss. 944.30,  
11 944.31, 944.33, and 944.34.  
12 f. Any of the crimes relating to harassment that are specified under s. 947.013.  
13 g. Notwithstanding par. (a), any breach of the rental agreement that  
14 jeopardizes the health, safety, or welfare of the landlord or his or her agent or another  
15 tenant.

16 2. A landlord terminating a tenancy under subd. 1. must give the tenant  
17 written notice requiring the tenant to vacate on or before a date not less than 5 days  
18 after the giving of the notice. The notice shall state the basis for its issuance and the  
19 right of the tenant to contest the termination of tenancy in an eviction action under  
20 ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be  
21 terminated without proof by the landlord by the greater preponderance of the  
22 credible evidence that the tenant is committing or has committed on or near the  
23 premises a crime or other activity specified in subd. 1.

24 SECTION 4. Initial applicability.


property owner

or a guest of the tenant

Insert 2-17

1           (1) This act first applies to crimes or other actions committed during tenancies  
2       commenced or renewed on the effective date of this subsection.

3 (END)



Dante

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1793/lins

PJK:.....

**INSERT A**

*not* If the tenant contests the termination of tenancy in an eviction action, the property owner must prove by the greater preponderance of the evidence that the tenant or a guest of the tenant is committing or has committed the crime or other action on which the termination of tenancy is based.

**(END OF INSERT A)**

**INSERT 2-1**

1           **SECTION 1.** 704.17 (1) (b) of the statutes is amended to read:

2           704.17 (1) (b) If Except as provided in par. (d), if a month-to-month tenant  
3           commits waste or a material violation of s. 704.07 (3) or breaches any covenant or  
4           condition of the tenant's agreement, other than for payment of rent, the tenancy can  
5           be terminated if the landlord gives the tenant notice requiring the tenant to vacate  
6           on or before a date at least 14 days after the giving of the notice.

**History:** 1981 c. 286; 1993 a. 139, 486; 1995 a. 267; 2005 a. 281.

**(END OF INSERT 2-1)**

**INSERT 2-3** ← *use 3 times*

*not*  
7           by using the procedure under subd. 2.

**(END OF INSERT 2-3)**

**INSERT 2-17** ← *use 3 times*

*not*  
8           on the basis of a crime or other activity specified in

**(END OF INSERT 2-17)**

**INSERT 2-24**

9           **SECTION 2.** 704.17 (2) (b) of the statutes is amended to read:

10           704.17 (2) (b) If Except as provided in par. (d), if a tenant under a lease for a  
11           term of one year or less, or a year-to-year tenant, commits waste or a material



*Ins 2-24 contd*

1 violation of s. 704.07 (3) or breaches any covenant or condition of the tenant's lease,  
2 other than for payment of rent, the tenant's tenancy is terminated if the landlord  
3 gives the tenant a notice requiring the tenant to remedy the default or vacate the  
4 premises on or before a date at least 5 days after the giving of the notice, and if the  
5 tenant fails to comply with such notice. A tenant is deemed to be complying with the  
6 notice if promptly upon receipt of such notice the tenant takes reasonable steps to  
7 remedy the default and proceeds with reasonable diligence, or if damages are  
8 adequate protection for the landlord and the tenant makes a bona fide and  
9 reasonable offer to pay the landlord all damages for the tenant's breach. If Except  
10 as provided in par. (d), if within one year from the giving of any such notice, the  
11 tenant again commits waste or breaches the same or any other covenant or condition  
12 of the tenant's lease, other than for payment of rent, the tenant's tenancy is  
13 terminated if the landlord, prior to the tenant's remedying the waste or breach, gives  
14 the tenant notice to vacate on or before a date at least 14 days after the giving of the  
15 notice.

History: 1981 c. 286; 1993 a. 139, 486; 1995 a. 267; 2005 a. 281.

(END OF INSERT 2-24)

### INSERT 3-24

16 **SECTION 3.** 704.17 (3) (a) of the statutes is amended to read:

17 704.17 (3) (a) If Except as provided in par. (c), if a tenant under a lease for more  
18 than one year fails to pay rent when due, or commits waste, or breaches any other  
19 covenant or condition of the tenant's lease, the tenancy is terminated if the landlord  
20 gives the tenant notice requiring the tenant to pay the rent, repair the waste, or  
21 otherwise comply with the lease on or before a date at least 30 days after the giving  
22 of the notice, and if the tenant fails to comply with the notice. A tenant is deemed

↓

*Ins 2-24 contd*

1 to be complying with the notice if promptly upon receipt of the notice the tenant takes  
2 reasonable steps to remedy the default and proceeds with reasonable diligence, or if  
3 damages are adequate protection for the landlord and the tenant makes a bona fide  
4 and reasonable offer to pay the landlord all damages for the tenant's breach; but in  
5 case of failure to pay rent, all rent due must be paid on or before the date specified  
6 in the notice.

**History:** 1981 c. 286; 1993 a. 139, 486; 1995 a. 267; 2005 a. 281.

**(END OF INSERT 3-24)**

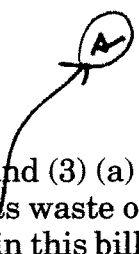
**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1793/1dn

PJK:.....

Date

Lbjk

Under s. 704.17 (1) (b), (2) (b), and (3) (a) in current law, a landlord may terminate the tenancy of a tenant who commits waste or who breaches any covenant or condition of the lease. In the new provision in this bill draft, a property owner (I changed the term "landlord" to "property owner") may terminate the tenancy of a tenant who commits any of the specified crimes or other activities, which include damage to property and committing a breach of the rental agreement that jeopardizes the health, safety, or welfare of the property owner, his or her agent, or another tenant. Additionally, if a lease prohibits a tenant from committing any of the specified crimes or other activities on or near the rental premises, doing so is a breach of the lease. Therefore, there is overlap between current law and this bill draft. To address that, I have excepted the new provisions from the current law provisions and attempted to fashion the language so that, if a tenant is committing one of the crimes or other activities specified in the new provisions, the property owner would use the method in the new provisions to terminate the tenancy. Let me know, however, if you would like the property owner to have the option to choose between the two methods. In that case, I would try to make it clear that either option may be used. The differences involve the time after the notice within which the tenant must vacate the property, whether the tenant has the right to "cure" the default, and whether the notice must inform the tenant that he or she may contest the action in an eviction action. (Even if the notice is not required to provide that information, however, the landlord/property owner would still have to commence an eviction action to remove the tenant if the tenant did not vacate the property voluntarily after receiving the notice to vacate.)

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1793/1dn  
PJK:bjk:ph

December 4, 2009

Under s. 704.17 (1) (b), (2) (b), and (3) (a) in current law, a landlord may terminate the tenancy of a tenant who commits waste or who breaches any covenant or condition of the lease. In the new provisions in this bill draft, a property owner (I changed the term "landlord" to "property owner") may terminate the tenancy of a tenant who commits any of the specified crimes or other activities, which include damage to property and committing a breach of the rental agreement that jeopardizes the health, safety, or welfare of the property owner, his or her agent, or another tenant. Additionally, if a lease prohibits a tenant from committing any of the specified crimes or other activities on or near the rental premises, doing so is a breach of the lease. Therefore, there is overlap between current law and this bill draft. To address that, I have excepted the new provisions from the current law provisions and attempted to fashion the language so that, if a tenant is committing one of the crimes or other activities specified in the new provisions, the property owner would use the method in the new provisions to terminate the tenancy. Let me know, however, if you would like the property owner to have the option to choose between the two methods. In that case, I would try to make it clear that either option may be used. The differences involve the time after the notice within which the tenant must vacate the property, whether the tenant has the right to "cure" the default, and whether the notice must inform the tenant that he or she may contest the action in an eviction action. (Even if the notice is not required to provide that information, however, the landlord/property owner would still have to commence an eviction action to remove the tenant if the tenant did not vacate the property voluntarily after receiving the notice to vacate.)

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**Duerst, Christina**

---

**From:** Oechsner, Jennifer  
**Sent:** Monday, March 08, 2010 4:36 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-1793/1 Topic: Terminating a tenancy for conviction of a drug-related or violent crime

Please Jacket LRB 09-1793/1 for the SENATE.

Thank you,

**Jennifer Oechsner**  
**Office of Senator Jeff Plale**  
**District Office: 414.744.1444**  
**Madison Office: 608.266.7505**